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Filing date: **04/14/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92042082
Party	Plaintiff Four Seasons Dairy, Inc.
Correspondence Address	SAMUEL FRIEDMAN 225 BROADWAY, SUITE 1804 NEW YORK, NY 10007 UNITED STATES samfriedman@verizon.net
Submission	Testimony For Plaintiff
Filer's Name	Samuel Friedman
Filer's e-mail	samfriedman@verizon.net
Signature	/Samuel Friedman/
Date	04/14/2010
Attachments	PETITIONER'S TESTIMONIAL DEPOSITION OF OLEG KESLER 4-10-08.pdf (32 pages)(397990 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,479,287
Issued on August 21, 2001

FOUR SEASONS DAIRY, INC.,

Petitioner,

- against -

INTERNATIONAL GOLD STAR
TRADING CORP.,

Registrant

Cancellation No.: 92042082

Mark: BABUSHKA'S RECIPE

Reg. No. 2,479,287

Filed: December 7, 1999

Issued: August 21, 2001

I hereby certify that this correspondence is being filed with the Trademark Trial and Appeal Board through use of the Electronic System for Trademark Trials and Appeals (ESTTA)

April 14, 2010

(Date of Electronic Filing)

Samuel Friedman

Name of Representative



Signature

April 14, 2010

Date of Signature

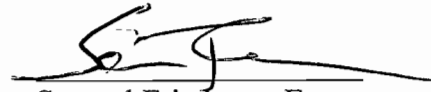
**PETITIONER'S NOTICE OF FILING TESTIMONIAL DEPOSITION OF
OLEG KESLER OF APRIL 10, 2008 AND RELATED EXHIBIT**

Petitioner, Four Seasons Dairy, Inc., pursuant to 37 C.F.R. §§ 2.123 and 2.125, gives notice of electronic filing of the certified transcript of the testimonial deposition of Oleg Kesler, taken on April 10, 2008, together with the accompanying exhibit, namely Petitioner's Trial Exhibit No. 17.

True copies of the transcript and exhibits were previously served on counsel for Registrant on May 9, 2008.

Dated: April 14, 2010
New York, New York

Respectfully submitted,

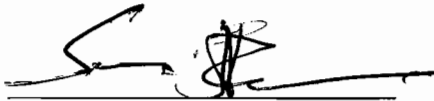
A handwritten signature in black ink, appearing to read 'S. Friedman', written over a horizontal line.

Samuel Friedman, Esq.
225 Broadway, Suite 1804
New York, New York 10007
Tel: (212) 267-2900
Attorney for Petitioner
FOUR SEASONS DAIRY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Petitioner's Notice of Filing Testimonial Deposition of Oleg Kesler in Cancellation Proceeding No. 92042082 entitled Four Seasons Dairy, Inc. v. International Gold Star Trading Corp., was, pursuant to stipulation served by email on counsel for Registrant, addressed as follows:

Roger S. Thompson
Cohen, Pontani, Lieberman & Pavane
551 Fifth Avenue
New York, New York 10176
Email: rthompson@cplplaw.com.

A handwritten signature in black ink, appearing to read 'S. Friedman', written over a horizontal line.

Samuel Friedman

April 14, 2010
Date

ORIGINAL

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK
TRIAL AND APPEAL BOARD

In the Matter of Registration No. 2,479,287
Issued on August 21, 2001

-----X		
FOUR SEASONS DAIRY,)	Cancellation No:
INC.,)	92042082
)	
Petitioner,)	
)	Mark: BABUSHKA'S
-against-)	RECIPE
)	
INTERNATIONAL GOLD STAR)	
TRADING CORP.,)	
)	
Registrant.)	
-----X		

DEPOSITION OF OLEG KESLER

New York, New York

Thursday, April 10, 2008

Reported by:

BETH RADABAUGH

TOBY FELDMAN
INCORPORATED

NATIONWIDE SERVICES FOR LEGAL PROFESSIONALS
court reporting . videoconferencing . video . translations . tape transcriptions . scanning

April 10, 2008

5:25 p.m.

DEPOSITION of OLEG KESLER, held
at the offices of SAMUEL FRIEDMAN, ESQ.,
225 Broadway, Suite 1804, New York, New York,
Pursuant to Notice/Agreement, before
Beth Radabaugh, a Shorthand Reporter and
Notary Public of the State of New York.

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A P P E A R A N C E S:

SAMUEL FRIEDMAN, ESQ.

Attorney for Petitioner

225 Broadway, Suite 1804

New York, New York 10007

COHEN, PONTANI, LIEBERMAN & PAVANE, LLP

Attorneys for Registrant

551 Fifth Avenue

New York, New York 10176

BY: ROGER S. THOMPSON, ESQ.

ALSO PRESENT:

Pavel Ezersky, Interpreter

Alexandr Bekker

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2 IT IS HEREBY STIPULATED AND AGREED
3 by and between counsel for the respective
4 parties hereto, that the filing, sealing
5 and certification of the within deposition
6 shall be and the same are hereby waived.

7 IT IS FURTHER STIPULATED AND AGREED
8 that all objections, except as to the form
9 of the question, shall be reserved to the
10 time of trial, also an objection by one is
11 an objection by all.

12 IT IS FURTHER STIPULATED AND AGREED
13 that the within deposition may be signed
14 before any Notary Public with the same
15 force and effect as if signed and sworn to
16 before this court.
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2 P A V E L E Z E R S K Y, Interpreter, having
3 been first duly sworn by a notary public
4 translated as follows:

5 O L E G K E S L E R, having been first duly
6 sworn by a Notary Public, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FRIEDMAN:

10 Q. Would you please state your name and
11 address for the record.

12 A. My name is Oleg Kesler.

13 Q. Are you employed?

14 A. Yes, I did.

15 Q. Where are you employed?

16 A. I work for Four Seasons Dairy.

17 Q. What is your position?

18 A. President.

19 Q. Are you also an owner of the
20 company?

21 A. Yes, I am.

22 Q. Since when have you been president
23 of Four Seasons Dairy?

24 A. From the date of January 4th, 1999.

25 Q. And before working for Four Seasons

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O. Kesler

Dairy, Inc., were you employed?

A. Yes. Yes, I did.

Q. And where were you employed?

A. A&O Corporation.

Q. And did you work together with
Alexandr Bekker at A&O Corporation?

A. Yes, I did.

Q. Now, as president of Four Seasons
Dairy, Inc., what are your duties and
responsibilities?

A. My duties are to buy the
merchandise, to sell the merchandise, the
products I should say, to advertise products.

Q. You have been present today during
all of the testimony of Alexandr Bekker.

A. Yes.

Q. Did you hear and understand
Mr. Bekker's testimony today?

A. Yes, I did.

Q. Do you agree with the testimony
given by Alexandr Bekker today?

A. No.

THE INTERPRETER: You said no?

(The witness and interpreter

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O. Kesler

confer.)

MR. FRIEDMAN: Let's read back the question.

(Record read.)

A. Yes, I am.

Q. I'm going to refer you to Petitioner's 3. Do you remember whether you were physically present when Alexandr Bekker made entries in that booklet?

A. Yes.

Q. So you were physically present?

A. Yes.

Q. Were you physically present when Alexandr Bekker made entries in other booklets of that type that have not been produced because they've been destroyed?

A. Yes.

MR. FRIEDMAN: I'm going to refer the witness to the series of exhibits marked as Petitioner's 6, 7, 8, 9, 10 and 11.

Q. Were you physically present while these documents were discussed with the individuals who signed the documents?

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1 O. Kesler

2 A. Yes.

3 Q. As to all of them?

4 A. We did everything together.

5 Q. We being you and Alexandr Bekker?

6 A. Yes.

7 MR. FRIEDMAN: I'm referring the
8 witness to the document marked as
9 Petitioner's 12.

10 Q. Is that your signature that appears
11 on the bottom?

12 A. Yes, that's my signature.

13 MR. FRIEDMAN: Off the record for a
14 second.

15 (Discussion held off the record.)

16 MR. FRIEDMAN: What I'd like to do
17 is have 220 through 227 marked as the
18 petitioner's next exhibit.

19 (Petitioner's Exhibit 17, Trademark
20 Application for Registration in the United
21 States Patent and Trademark Office, is
22 marked for identification as of this date.)

23 Q. I'm calling your attention to
24 Petitioner's 17 and I'd like to call your
25 attention to the third --

O. Kesler

MR. FRIEDMAN: Well, I'll state for the record that Petitioner's 17 bears Bates stamp numbers P0220 through P0227 and, accept for the Bates stamp numbers, are downloaded from the US Patent and Trademark Office web site and constitute the trademark application of Four Seasons Dairy, Inc. for the Babushkino trademark.

(The interpreter is translating the document for the witness.)

MR. FRIEDMAN: You don't have to read the whole thing.

THE INTERPRETER: Well, I thought I need to translate this, no?

MR. FRIEDMAN: It's all right.

THE INTERPRETER: Okay.

Q. Now, I'm going to direct your attention to the bottom of the page that has Bates stamp number P0223. Is that your signature?

A. Yes.

Q. And I'd like to direct your attention to the page just before that marked P0222. Is that your signature?

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1 O. Kesler

2 A. Yes.

3 Q. Did you sign this document on or
4 about the date set forth on the document?

5 A. Yes, I did.

6 MR. FRIEDMAN: I have no further
7 questions for this witness.

8 MR. THOMPSON: I think I just have
9 one question.

10 CROSS-EXAMINATION

11 BY MR. THOMPSON:

12 Q. If you look at the first page of
13 P-17.

14 THE INTERPRETER: P-17?

15 MR. THOMPSON: The one you have in
16 front of you.

17 Q. The last paragraph on that first
18 page, the sentence reads "The trademark was
19 first used on the goods on January 10th, 1999."
20 Do you see that?

21 A. (Nodding.)

22 Q. And when you signed the document on
23 page P0223, you swore that that statement was
24 accurate, did you not?

25 MR. FRIEDMAN: If you need to read

O. Kesler

it to him to translate some of that --

THE INTERPRETER: Okay. Are you talking about the last paragraph?

MR. FRIEDMAN: Yeah, why don't you translate that for him, please. No, not that. You're looking at the power of attorney.

MR. THOMPSON: Page 223.

THE INTERPRETER: 223. Okay.

MR. THOMPSON: And specifically, just because it's a long paragraph, the last three lines.

THE INTERPRETER: The last three lines. Okay.

MR. THOMPSON: Starting at "and that." It's three lines up from the bottom. It says "and that all statements made..."

(The interpreter translates the document for the witness.)

A. This is the date when I signed this document.

Q. I understand. My question is the last part of that paragraph says "all

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O. Kesler

statements made in this application are true."

Correct?

A. Your question is?

Q. Well, my question is one of the statements in this application on the first page was that the trademark was first used on the goods on January 10th, 1999. Is that correct?

A. Yes, this statement is true.

Q. Okay. And that when it refers to the trademark, you're referring to the word babushkino; is that correct?

A. Yes, it's true.

Q. And that is shown on page P0226, is that correct, second from the back?

A. Yes, yes.

MR. THOMPSON: Nothing further.

MR. FRIEDMAN: I have redirect.

REDIRECT EXAMINATION

BY MR. FRIEDMAN:

Q. When did the corporation known as Four Seasons Dairy, Inc. first use the word trademark Babushkino on the goods?

A. From January of 1999.

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O. Kesler

Q. And you signed this application as president of Four Seasons Dairy, Inc.?

A. Yes.

Q. The applicant in this application is Four Seasons Dairy, Inc.?

MR. THOMPSON: Just for the record, you were holding Exhibit 17 in your hand when you referred to this application.

MR. FRIEDMAN: True.

A. Yes.

Q. When did A&O Corporation start using the trademark Babushkino on dairy products? Approximately. I don't need the exact date.

A. 1997. In the middle of the year, September, October.

Q. When you signed this application, P-17, did you understand that applicant, Four Seasons Dairy, Inc., to mean A&O Corporation?

A. No.

MR. FRIEDMAN: No further questions.

MR. THOMPSON: Nothing else.

(The deposition is adjourned at 5:50

p.m.)

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A C K N O W L E D G E M E N T

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, OLEG KESLER, hereby certify, I have read the transcript of my testimony taken under oath in my deposition of April 10, 2008; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

OLEG KESLER

Subscribed and sworn to before me
this _____ day of _____, 2008.

NOTARY PUBLIC

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C E R T I F I C A T I O N

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, BETH RADABAUGH, a Notary Public
within and for the State of New York, do
hereby certify:

That, OLEG KESLER, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition
is a true record of the testimony given by
the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 1st day of May, 2008.



BETH RADABAUGH

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT
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OLEG KESLER

Mr. Friedman	5		12
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Mr. Thompson		10	
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-----INFORMATION REQUESTS-----

DIRECTIONS: None

TO BE FURNISHED: None

REQUESTS: None

-----EXHIBITS-----

PETITIONER'S	DESCRIPTION	FOR ID.
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Exhibit 17, Trademark Application for Registration in the United States Patent and Trademark Office.....	8
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E R R A T A S H E E T

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Subscribed and sworn to before me
this _____ day of _____, 2008

Notary Public

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<p>A</p> <p>about 10:4 11:4 accept 9:5 accurate 10:24 action 15:18 address 5:11 adjourned 13:24 advertise 6:14 against 1:9 agree 6:21 AGREED 4:2,7,12 Alexandr 3:16 6:7 6:16,22 7:9,15 8:5 answered 14:13 answers 14:14 APPEAL 1:3 appears 8:10 applicant 13:5,18 application 8:20 9:8 12:2,6 13:2,5 13:9,17 16:14 Approximately 13:14 April 1:17 2:5 14:11 asked 14:13 attention 8:23,25 9:19,24 attorney 3:4 11:8 Attorneys 3:9 August 1:5 Avenue 3:10 A&O 6:5,7 13:12 13:19</p>	<p>Bekker 3:16 6:7,16 6:22 7:9,15 8:5 Bekker's 6:19 Beth 1:25 2:14 15:8 15:24 between 4:3 blood 15:18 BOARD 1:3 booklet 7:10 booklets 7:15 bottom 8:11 9:19 11:18 Broadway 2:12 3:5 buy 6:12</p> <p>C</p> <p>C 3:2 14:2 15:2,2 call 8:24 calling 8:23 Cancellation 1:6 certification 4:5 certify 14:9 15:10 15:16 COHEN 3:8 company 5:20 complete 14:12 confer 7:2 constitute 9:7 CORP 1:10 corporation 6:5,7 12:22 13:12,20 correct 12:3,9,13 12:16 14:12,15 counsel 4:3 COUNTY 14:5 15:5 court 4:16 CROSS 16:3 CROSS-EXAMI... 10:10</p>	<p>11:22 13:14 day 14:22 15:22 deposition 1:15 2:10 4:5,13 13:24 14:11,14 15:12,13 DESCRIPTION 16:13 destroyed 7:17 direct 5:8 9:18,23 16:3 DIRECTIONS 16:8 discussed 7:24 Discussion 8:15 document 8:8 9:11 10:3,4,22 11:21 11:23 documents 7:24,25 downloaded 9:6 duly 5:3,5 15:13 during 6:15 14:14 duties 6:10,12</p> <p>E</p> <p>E 3:2,2 5:2,2,2,5,5 5:5 14:2,2,2 15:2 16:2 effect 4:15 employed 5:13,15 6:2,4 entries 7:10,15 ESQ 2:11 3:3,12 everything 8:4 exact 13:14 EXAMINATION 5:8 12:20 examined 5:6 except 4:8 exhibit 8:18,19 13:8 16:14 exhibits 7:20 16:12 Ezersky 3:15</p>	<p>first 5:3,5 10:12,17 10:19 12:6,7,23 follows 5:4,7 force 4:15 form 4:8 forth 10:4 15:12 Four 1:6 5:16,23,25 6:9 9:8 12:23 13:3,6,19 Friedman 2:11 3:3 5:9 7:3,19 8:7,13 8:16 9:2,12,16 10:6,25 11:5 12:19,21 13:10,22 16:5 from 5:24 9:6 11:17 12:16,25 front 10:16 FURNISHED 16:9 further 4:7,12 10:6 12:18 13:22 15:16</p> <p>G</p> <p>G 5:5 14:2 given 6:22 14:15 15:14 going 7:7,19 9:18 GOLD 1:10 goods 10:19 12:8 12:24</p> <p>H</p> <p>hand 13:8 15:22 having 5:2,5 hear 6:18 held 2:10 8:15 hereinbefore 15:12 hereto 4:4 hereunto 15:21 him 11:2,6 holding 13:8</p>	<p>individuals 7:25 INFORMATION 16:7 interested 15:19 INTERNATION... 1:10 interpreter 3:15 5:2 6:24,25 9:10 9:14,17 10:14 11:3,10,14,20 Issued 1:5</p> <p>J</p> <p>January 5:24 10:19 12:8,25 just 9:24 10:8 11:12 13:7</p> <p>K</p> <p>K 5:2,5 14:2 Kesler 1:15 2:10 5:12 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:9,20 15:11 16:4 known 12:22</p> <p>L</p> <p>L 5:2,5,5 14:2 last 10:17 11:4,13 11:14,25 Let's 7:3 LIEBERMAN 3:8 like 8:16,24 9:23 lines 11:13,15,17 LLP 3:8 long 11:12 look 10:12 looking 11:7</p>
<p>B</p> <p>BABUSHKA'S 1:8 babushkino 9:9 12:13,24 13:13 back 7:3 12:16 Bates 9:4,5,20 bears 9:3 before 1:3 2:13 4:14,16 5:25 9:24 14:21 being 8:5</p>	<p>D</p> <p>D 14:2 16:2 dairy 1:6 5:16,23 6:2,10 9:9 12:23 13:3,6,13,19 date 5:24 8:22 10:4</p>	<p>F</p> <p>F 15:2 Fifth 3:10 filing 4:4</p>	<p>I</p> <p>ID 16:13 identification 8:22 Inc 1:7 6:2,10 9:9 12:23 13:3,6,19</p>	<p>M</p> <p>M 14:2 made 7:10,15 11:19 12:2 Mark 1:8 marked 7:21 8:8,17 8:22 9:24</p>

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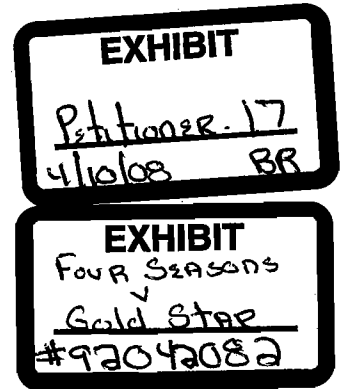
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PETITIONER'S EXHIBIT 17

Cancellation No.: 92042082
Four Seasons Dairy Inc. v. International Gold Star Trading Corp.
Offered by Petitioner, Four Seasons Dairy Inc.

TRADEMARK APPLICATION FOR REGISTRATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

MARK: DESIGN ONLY
CLASS NO.: 29



TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Applicant, Four Seasons Dairy, Inc. is a corporation organized and existing pursuant to the laws of the State of New York, located and doing business at 2402 65th Street, Apt. B3, Brooklyn, New York 11204.

Applicant requests registration of the above identified trademark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §§1051, et seq., as amended) for the following goods:

Vegetable oil spread, vegetable extracts, margarine, dairy products including butter, cottage cheese, yogurt and all other goods in International Class 29.

Applicant has adopted and is using the trademark in commerce on or in connection with the above identified goods.

The trademark was first used on the goods on January 10, 1999; was first used on the goods in interstate commerce on January 10, 1999; and is now in use in such commerce.

The mark is used by applying it to labels affixed to the goods, and in other manners customary to the trade, and one specimen showing the mark as used in commerce is presented herewith.

The mark consists of a word in Russian.

The Russian word in the mark is translated into English as "Granny's".

POWER OF ATTORNEY

Applicant hereby appoints Samuel Friedman, Attorney at Law, maintaining offices at 225 Broadway, Suite 1804, New York, New York, 10007, as attorney to prosecute this application for registration with full power of substitution and revocation, to transact all business in the U.S. Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration.

Please direct all communications and correspondence to:

Samuel Friedman, Esq.
225 Broadway, Suite 1804
New York, New York 10007
Tel: (212) 267-2900

FOUR SEASONS DAIRY, INC.

By: Oleg Kesler
Oleg Kesler, President

Date: 11-20-2000

D E C L A R A T I O N

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the undersigned is properly authorized to execute this application on behalf of the applicant; the undersigned believes the applicant to be the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), the undersigned believes the applicant to be entitled to use such mark in commerce; to the best of the undersigned's knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of the undersigned's own knowledge are true and all statements made on information and belief are believed to be true.

FOUR SEASONS DAIRY, INC.

By: Oleg Kesler
Oleg Kesler, President

Date: 11-20-2000

tm\4seasons\babushkino\app-use

SAMUEL FRIEDMAN

ATTORNEY AT LAW

225 BROADWAY - SUITE 1804
NEW YORK, N.Y. 10007
TELEPHONE (212) 267-2900
FAX (212) 587-0570

EXPRESS MAIL LABEL NO: EK521131889US

November 30, 2000

Box New Applications Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Re: U.S. Trademark Application
Applicant: Four Seasons Dairy, Inc.
Mark: DESIGN ONLY
Class: 29

We have enclosed a trademark application comprised of the following:

1. Application for Registration based on use in commerce;
2. Official fee in the amount of \$325.00 for one class;
3. Formal drawing;
4. Acknowledgement postcard;
5. One specimen showing use in commerce; and
6. Power of Attorney form.

Respectfully submitted,



Samuel Friedman

SF:th
Encs.
Check No. 2790
Our Ref.: 4seasons\babushkino\trans.let

tm\4seasons\babushkino\trans.let

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TRADEMARK APPLICATION SERIAL NO.

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

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325.00 DP

PTO-1555
(5/87)



11-30-2000

U.S. Patent & TMOfo/TM Mail Ropt Dt. #00

APPLICANT: FOUR SEASONS DAIRY, INC.
ADDRESS: 2402 65th Street, Apt. B3
Brooklyn, New York 11204
FIRST USE: January 10, 1999 IN COMMERCE: January 10, 1999
GOODS: Vegetable oil spread, vegetable extracts,
margarine, dairy products including
butter, cottage cheese, yogurt and all
other goods in International Class 29.

БАБУШКИНО

EXPRESS MAIL LABEL NO: EK521131889US

Attorney:

Samuel Friedman, Esq.
225 Broadway, Suite 1804
New York, New York 10007
Tel: (212) 267-2900

tm\4seasons\babushkino\drawing

TRADEMARK



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